

TOWN OF AMHERST



APPOINTED COMMITTEE HANDBOOK

Revised 06/08/09

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1.0	INTRODUCTION.....	1
1.1	Purpose.....	1
1.2	Additional Publications.....	1
2.0	FORMATION OF COMMITTEES AND MEMBERSHIP.....	1
2.1	Committee Formation	1
2.2	Citizen Activity Forms.....	1
2.3	Appointment.....	1
2.4	Committee Orientation.....	2
2.5	Conflict of Interest Statute	2
2.6	Reappointment	4
2.7	Resignation.....	4
2.8	Other Terminations	4
2.9	Associate Members	4
3.0	OFFICERS	4
3.1	Elections.....	4
3.2	Chair.....	4
3.3	Vice-Chair	4
3.4	Secretary.....	5
3.5	Rotating Secretary.....	5
3.6	Staff Assistance.....	5
4.0	MEETINGS.....	6
4.1	Definition	6
4.2	Open Meeting Law.....	6
4.3	General Guidelines.....	6
4.4	Executive Session.....	7
4.5	Meeting Schedule.....	8
4.6	Meeting Location	8
4.7	Posting.....	8
4.8	Recordkeeping.....	8
4.9	Public Records Law.....	9
5.0	BUDGETS	9
5.1	Committee Budgets.....	9
5.2	Disbursements	9
5.3	Purchases.....	10
6.0	FUND RAISING.....	10
6.1	Background Information	10
6.2	Procedures	10
7.0	PLANNING.....	10
7.1	Charge and Plan of Action	10

8.0	REPORTING PROCEDURES	11
8.1	Appointing Authority	11
8.2	Liaison with Select Board	11
8.3	Liaison with Staff.....	11
8.4	Public Information Meetings.....	11
8.5	Town Meeting	11
8.6	Annual Town Report.....	12

SOURCES OF INFORMATION	13
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APPENDIX

Sample Committee Minutes Form
Open Meeting Law

1.0 INTRODUCTION

1.1 Purpose

The purpose of this handbook is to assist the many appointed boards, commissions, and committees of the Town. It provides a brief description of procedures which may be well known to many but are less familiar to others. It also provides details about important state statutes, such as the Open Meeting Law and the Conflict of Interest Law.

1.2 Additional Publications

All committee members should read and keep for reference the League of Women Voters publications, *Your Amherst Government* and the *Town Meeting Handbook*. The former gives an overview of Amherst government, including most boards and committees. The latter focuses on the procedures and practices of the Town Meeting, including advice to sponsors of warrant articles. This handbook does not duplicate all the details given in those booklets.

The Annual Town Report is another excellent source of information regarding boards and committees. It is posted on the Town website: www.amherstma.gov. In addition, staff in the Town Offices and the Library are a valuable resource, and are willing to be of assistance.

2.0 FORMATION OF COMMITTEES AND MEMBERSHIP

2.1 Committee Formation

The appointing authorities (the Select Board, Town Manager, and Town Meeting Moderator) appoint the Town's committees and boards. State statutes outline the powers and duties of many boards; the Town's general bylaws, which are adopted by Town Meeting, further define the work of some boards. Town Meeting may also request the appointment of a committee by approving an article for that purpose. The appointing authority prepares the charge and receives the reports and recommendations of the committee. If appropriate, the committee may also report to Town Meeting.

2.2 Citizen Activity Forms

The appointing authorities publicize vacancies on committees. Individuals interested in being considered for appointment should complete a Citizen Activity Form, available from the Select Board's Office, as well as on the Town's website (www.amherstma.gov), and return it to the same office. Applicants who do not have access to a computer, may call the Select Board's office at 413-259-3001 to request a form. Applicants should explain on the form any potential for or appearance of conflict of interest (See Section 2.5, Conflict of Interest). If there are no openings on a citizen's committee(s) of choice, his/her Citizen Activity Form will be held on file for at least two years for consideration should an opening occur. Citizens are encouraged to attend meetings of their committee of interest to learn about the committee's role in the community.

2.3 Appointment

The goal of the appointing authorities is to appoint qualified and interested Amherst residents

who are broadly representative of the Town. The appointing authorities carefully consider applications and suggestions from many sources, including but not limited to Citizen Activity Forms, verbal expressions of interest, recommendations by committees, etc. They also take into account as many relevant factors (e.g., age, sex, race, experience, place of residence, etc.) as possible and make a special effort to ensure representation by minorities and tenants. U.S. Citizenship is not a prerequisite for appointment. Selections are based on current committee composition, qualifications, experience, recommendations, available space and to attendance record and previous performance, when available. Generally, if a person is serving a first term, they are given preference for a second. Conversely, if a person is completing a second term, and there are other qualified applicants, preference would be given to a newcomer. The general policy is to appoint an individual to no more than two permanent committees at a time. Non-residents may serve on ad hoc and special committees when the appointing authority deems it in the best interest of the committee and the Town. The appointee receives written notification of appointment and a Certificate of Appointment signed by the appointing authority and must be sworn in by the Town Clerk prior to attending a committee meeting as an official member. The Town Clerk gives committee members information about the Open Meeting Law (MGL Chapter 39, Section 23B) as state statutes require; members must sign a written acknowledgment of receipt.

2.4 Committee Orientation

The Select Board urges that the committee chair, with the assistance of staff liaison, conduct orientation sessions when new members are appointed. New members should be informed about the committee's specific role, powers and duties, and rules and regulations, and any issues frequently encountered by the board or committee. In the case of certain boards (e.g., Zoning Board of Appeals, and Planning Board) the chair may ask the Town Manager to have Town Counsel attend this session.

2.5 Conflict of Interest Statute as It Applies to Committee Appointees (M.G.L. Chapter 268A)

2.5.1 Purpose

According to the *Practical Guide to the Conflict of Interest Law for Municipal Employees* published by the State Ethics Commission, the "purpose of the conflict law is to ensure that public employees' private financial interests and personal relationships do not conflict with their public obligations. The law is broadly written to prevent a public employee from becoming involved in a situation which could result in a conflict or give the appearance of a conflict.

"The law restricts what a public employee may do: (1) on the job; (2) after hours (or 'on the side'); and (3) after leaving public service."

2.5.2 Provisions

The law prohibits a variety of actions, including bribery, extra pay, receipt of gifts or privileges because of committee members' official actions, and acting as an agent or attorney for anyone in a claim against or doing business with the Town. The law prohibits all municipal employees from participating in a particular matter in which committee members or any of the following have a financial interest:

- immediate family.

- partner or business associates.
- a business organization in which the committee member serves as an officer, director, trustee, partner or employee (including a non-profit organization.)
- any person or organization with whom the committee member is negotiating or has any arrangement concerning prospective employment.

If board or committee members have a conflict of interest or an appearance of conflict in any matter before the board or committee, they should not be counted in the quorum nor participate in or be present for any pertinent discussions or votes. The law provides for the legal determination of conflict of interest status for any employee submitting a request to the appointing authority or State Ethics Commission. The law also provides for continued service in certain circumstances if full disclosure is made or a special exemption is granted by the Select Board. If committee members have any questions about their activities, they should file a written request with the Town Manager. The answer to the request will be in writing and become a matter of public record.

2.5.3 Persons the Conflict of Interest Statute Governs

Municipal Employees: "The conflict law regulates the conduct of public officials and employees (referred to collectively in the law as 'employees') at the state, county and municipal levels of government. The term 'employee' at each level is defined expansively. You are considered a municipal employee if you hold any office, position, employment or membership in any municipal agency. It does not matter whether you are paid or unpaid or whether you serve full-time or part-time. People who work as consultants or on an intermittent basis are generally covered, as well. For example, unpaid members of local town or city boards or commissions are municipal employees, as are private citizens serving on a special advisory committee (emphasis added) appointed by the mayor or board of selectmen to make recommendations on a specific issue."

"Special" Municipal Employees: "'Special' municipal employee status may be assigned to certain municipal positions by a vote of the board of selectmen, board of aldermen or city council. Two sections of the conflict law apply less restrictively to special municipal employees. You are eligible to be designated as a special municipal employee provided that: (1) you are not paid; or (2) you hold a part-time position which allows you to work at another job during normal working hours; or (3) you were not paid by the city or town for more than 800 working hours (approximately 20 weeks full-time) during the preceding 365 days.

"It is the municipal position which is designated as having special status, not the individual. Therefore, all employees holding the same office or position must have the same classification as special. For instance, one member of a school committee may not be classified as a special unless all members are similarly classified."

2.5.4 Annual Classification.

Each year in July, the Select Board votes to classify as "Municipal" or "Special Municipal" all committee and board members. Under the provisions of this law, most appointed committee and board members are classified special municipal employees. Individual members should feel free to confirm their status with the appointing authority.

2.6 Reappointment

Reappointment is based on an evaluation by the appointing authority of the Committee members' contribution to the committee, the desirability of widespread involvement, and the changing needs of the committee and the Town. Although there is no fixed limit on length of service, the length of service is normally limited to two (2) three-year (3) terms. In cases where special training or expertise is required, longer periods of service may be appropriate. A committee member is under no obligation to accept reappointment, nor is the appointing authority obligated to offer reappointment.

2.7 Resignation

A committee member who is no longer able to serve should resign promptly so that the vacancy may be filled. A written resignation must be submitted to the appointing authority and the chair of the committee.

2.8 Other Terminations

In rare circumstances such as continued, unexplained absences or conflict of interest, the appointing authority may ask for a member's resignation or, if necessary, revoke the appointment. Also, the appointment of a committee member who fails to attend three consecutive meetings may be terminated. Prompt, written notification to the committee member will be given in the event of such action.

2.9 Associate Members

From time to time, a committee may find it useful to appoint associate members to assist the committee in the successful completion of its charge. Appointments of associate members are made by the appointing authority, provided the committee submits written substantiation of the need for associate members. Associate members are appointed for terms of one year.

3.0 **OFFICERS**

3.1 Elections

Committees elect a chair, vice-chair and a secretary annually, usually at the first meeting after new terms begin in July. It is the responsibility of the chair to notify the appointing authority and the Select Board's Administrative Assistant of changes in officers.

3.2 Chair

The chair presides at all meetings, decides questions of order, calls special meetings, and signs official documents that require the chair's signature. The chair has the same rights as other members to offer resolutions, make or second motions, discuss questions, and vote thereon.

3.3 Vice-Chair

The vice-chair acts for the chair whenever the latter is absent from meetings and performs other necessary duties.

3.4 Secretary

The secretary is responsible for the following duties of the committee:

1. Take and transcribe the committee's minutes, record amendments and file approved minutes with the Select Board Office.
2. Prepare agendas and other materials. The tentative agenda for the next meeting and minutes of the previous meeting should be mailed or e-mailed to committee members, staff liaison, and the Select Board's liaison at least several days before a meeting.
3. Copy meeting materials, using the copier in the staff liaison's department, and place in envelopes for mailing. The staff liaison will provide mailing labels and will mail the packets. Emails and attachments may substitute for copies and mailings if all committee members can receive emails and all attachments (some of which require programs such as Excel or Power Point, unless the contents of the attachment can be cut and pasted into the body of the email).
4. Reserve meeting rooms (see Section 4.6) and post meetings with the Town Clerk (at least 48 hours, not counting Sundays and holidays) before meeting times.
5. Where applicable, process the accounts payable and turnovers for the committee.

3.5 Rotating Secretary

A committee may choose to have a rotating secretary. The responsibilities of the rotating secretary are identical to those of a secretary.

3.5.1 Designating a Successor

At the beginning of the next meeting, the rotating secretary should request that the chair designate a successor. If one is not designated, the previously appointed secretary continues in that capacity.

3.5.2 Recording Amendments

It is the responsibility of each secretary to record amendments to minutes taken and to file them with the Select Board Office.

3.6 Staff Assistance

If a committee determines that its workload or meeting schedule is such that the clerk/secretary's responsibilities will have an adverse impact on the committee's operation, the committee may request a budget for paid, part-time assistance by applying in writing to the Finance Committee with copies to the Town Manager and the committee's staff liaison.

4.0 MEETINGS

4.1 Definition

A public meeting occurs at any time a quorum of the committee (or subcommittee) members get together to discuss or consider any public business or policy over which the committee has some jurisdiction or advisory power. In most cases, more than one-half of the committee's full membership constitutes a quorum and is necessary for conducting official business. It should be noted that members participating by speaker phone may not vote on issues nor be considered as part of the quorum.

4.2 Open Meeting Law

4.2.1 General Information

The Massachusetts Open Meeting Law (See Appendix) requires that all meetings of elected or appointed boards, committees or subcommittees be open to the public except in eight specific situations where Executive Session is permitted (See Section 4.4, Executive Session). No votes taken in open session by a governmental body, may be by secret ballot.

The law does not apply to chance meetings or social occasions; however, such meetings cannot be used to circumvent the requirement of discussing and deliberating at public meetings. The law does not apply to administrative meetings or to a group appointed by a single administrator to advise on administrative responsibilities.

The Open Meeting Law does not contravene other laws, such as the Privacy Act. If clarification is needed, particularly concerning Executive Session and the rights of individuals, the committee chair may request that the Town Manager obtain advice on specific questions from legal counsel.

4.2.2 Recordings

Any person may record a meeting (with the exception of Executive Session) with a tape recorder and/or videotape equipment provided there is no active interference with the conduct of the meeting. The manner in which this right is to be exercised is subject to the reasonable direction of the chair.

4.3 General Guidelines

A committee may adopt formal rules of order, such as Robert's Rule of Parliamentary Procedure. Although most small committee discussions may seem too casual to be called debate, it is advisable for the committee to observe a minimum of generally accepted procedures. Attentive guidance by the chair and adherence to adopted procedures can increase efficiency as well as maintain objectivity.

The chair should limit all participants to concise, non-repetitive statements. Although desirable, it is not necessary for the committee to continue discussion until complete consensus is achieved. Other actions such as calling for a vote, postponing until more information is available, or referring to a subcommittee may be required.

Careful preparation before meetings, e.g., organizing agenda items, distributing information in advance, and anticipating possible questions, can expedite discussion, facilitate action and avoid long and exhausting meetings.

Amherst has long been recognized for vigorous dissent, civil discussion, and mutual respect among individuals of diverse points of view. Committees discuss the merits of issues; personal comments are considered out of order. The Open Meeting Law (See Section 4.2) does not require that visitors be allowed to participate, and time constraints and agendas often require brevity. It may be advisable for the chair to remind speakers of time and repetition limits. No one may speak at a committee meeting without permission of the chair. If a speaker refuses to be silent after warning from the chair, the chair has the authority to order the speaker removed from the meeting by the police. Nevertheless, all committee members represent and serve the Town. They should treat all visitors and other committee members with courtesy and consideration. Whenever possible, it is advisable to permit public participation in some form, such as a short period at each meeting or occasional meetings for public hearings.

4.4 Executive Session

An Executive Session is closed to the public, but the committee must first convene in an Open Session for which notice has been posted. A majority of the members must vote, by roll-call vote entered into the minutes, in favor of a motion to go into Executive Session. The motion should specify the applicable reason and state whether or not the Open Session will reconvene following Executive Session. Records of any Executive Session remain closed to the public only as long as publication may defeat the purposes of the Executive Session. All votes taken in Executive Session are recorded by roll call and become a part of the record of that session. Topics discussed in Executive Session are confidential. Attendees do not discuss these matters with anyone until the purpose for the Executive Session no longer exists and the minutes have been voted to be released to the public.

Executive session may be held only for the following purposes:

1. To discuss the reputation, character, physical condition or mental health of an individual provided that the individual is accorded notice and certain rights.
2. To consider complaints against an individual provided that the individual is accorded notice and certain rights.
3. (a) To discuss collective bargaining or litigation strategy if open discussion may have a detrimental effect on the position of the governmental body; (b) to conduct collective bargaining sessions; and (c) to conduct contract negotiations with nonunion personnel.
4. To discuss security measures.
5. To investigate alleged criminal misconduct or to discuss filing criminal complaints.
6. To consider the purchase, exchange, lease, or value of real property if open discussion may have a detrimental effect on the position of the governmental body.
7. To comply with the provisions of any general or special law or federal grant-in-aid

requirements.

8. To review resumes and interview candidates for employment if an open meeting will have a detrimental effect in obtaining qualified applicants.
9. To meet with a mediator regarding any litigation or decision.

NOTE: Purposes #1 and #2 should be used with great caution and should ordinarily be discussed in advance with the Town Manager or, if he/she authorizes it, with Town Counsel.

4.5 Meeting Schedule

The frequency of meetings depends on a committee's workload. Most meetings are commonly held weekly, bimonthly or monthly. The chair calls each meeting except for the first one, which is called by the appointing authority. When possible, a regular meeting day, hour, and location should be established. Except in cases of emergency, Town committees do not meet on major religious or official holidays.

4.6 Meeting Location

Meetings must be held in a place which is open to the public and accessible to the handicapped. The Select Board urges committees to meet in a Town building because meetings held in private homes or restaurants may give the appearance of being secret and discourage the public from attending. A committee may reserve a room in a Town building by contacting the following:

- Town Hall: 259-3035 or 259-3001
- Bangs Community Center: 259-3060 (Council on Aging)
- Jones Library: 259-3090
- Police Community Room: 259-3014

4.7 Posting

It is the responsibility of the committee (See Section 3.4, Secretary) to give notice to the Town Clerk (post) of the committee's meetings with time, date, and place. Except for emergency meetings, meetings must be posted 48 hours in advance by the Town Clerk; including Saturdays not Sundays or legal holidays. In the case of emergency meetings (sudden, unexpected occasions which require immediate action by the body) or adjourned meetings if scheduled for less than 48 hours from the adjournment, prior posting is not required; however, the Town Clerk must be informed and the meeting posted as soon as possible. The Town Clerk is responsible for maintaining a current listing of all posted meetings on the bulletin board at Town Hall.

4.8 Recordkeeping

State law requires that a committee keep accurate records of its public meetings. The committee must vote to accept all minutes. The records of each regular meeting are public information, and chairs or their designees must maintain a copy of all approved minutes for public inspection. In addition, a copy of all approved minutes must be filed with the Select Board Office. The chair or their designees should submit the file(s) of pertinent material to their successor or to the staff

liaison at their resignation or completion of their term with the committee. (See sample minutes form in appendices.)

Minutes must include:

- the names of committee members present at the meeting.
- the names of others present if Executive Session.
- date, time convened, and time adjourned.
- all agreements reached by vote or consensus.

Minutes should include:

- assignments.
- mention of topics discussed.
- names of additional participants (not press or observers).
- name of recorder.

Minutes may include:

- summaries of discussions (recommended only if they are helpful in understanding decisions or provide factual information that may be useful to the committee).
- schedule of future meeting(s).

4.9 Public Records Law

The Massachusetts Public Records Law (MGL Chapter 4, Section 7(26) and any amendments provides right of access to public records, broadly defined to include all documentary materials except eleven specific exemptions such as personnel and medical files, proposals and bids, and appraisals of property. The minutes, informational data, memoranda and circulating materials of any Town board or committee are mostly all public information. The committee should consult its liaison if questions arise concerning freedom of information.

5.0 **BUDGETS**

5.1 Committee Budgets

In general, an individual committee does not have a budget unless one is authorized by Town Meeting at the time of its formation. If a committee anticipates a need to expend funds, it can request a budget for the next fiscal year through the Town Manager; or, if funds are needed during a fiscal year, it can make a request to the Finance Committee for a transfer from the Reserve Fund. Such a request is subject to a review and evaluation of need and the availability of funds.

5.2 Disbursements

As bills are incurred by the committee, the committee's staff liaison submits invoices to the Accounting Office, attaching all appropriate receipts, paperwork, etc. If there is no staff liaison, the committee's clerk/secretary should submit same to the Town Manager's Office for processing. The Accounting Office prepares the accounts payable warrant and forwards to the Town Manager for review and approval.

5.3 Purchases

Purchase orders (obtainable from the Accounting office) must be completed for all purchases over \$250, signed by the committee chair, staff liaison (if any), and submitted to the Accounting Office. The Accounting Office completes its portion of the purchase order, and forwards to the Town Manager for review and approval.

Purchases in excess of \$5,000 must go through the bid process and comply with M.G.L. Chapter 30B, the Uniform Procurement Act. For more information, contact the Town Accountant.

6.0 **FUNDRAISING**

6.1 Background Information

From time to time, Town Meeting may authorize the formation of a committee the task of which is to raise funds for a specific purchase (e.g., the La Paz, Centro Nicaragua Sister City Committee, formed in 1987, which raised money to purchase an ambulance for La Paz Centro). The provisions of MGL Chapter 44, Section 53A enable a Town committee to raise and disburse funds according to specific procedures.

6.2 Procedures

6.2.1 Donations

All funds received by the committee go into the General Fund and may not be dispersed by the committee on its own without special arrangements. Sometimes donations are made to the Town for deposit to a separate, designated account for specified purposes. A Receipt for a Restricted Gift form to record the donation is available from the Select Board's office. The committee's designee completes a turnover form for contributions received and transmits this document and funds to the Town Treasurer.

6.2.2 Disbursements of Funds (See Section 5.2)

6.2.3 Purchases (See Section 5.3)

7.0 **PLANNING**

7.1 Charge and Plan of Action

The committee should review the charge prepared by the appointing authority at an early meeting and periodically thereafter in order to keep its work focused and moving toward its goals. When the committee is established because of Town Meeting action, the appointing authority usually incorporates the purpose of the article within the charge. However, the Town Meeting vote is advisory and not legally binding.

The committee, with advice from staff and the appointing authority, should develop a plan of action to accomplish the objectives. The plan should include major reporting milestones so that the committee and the appointing authority may assess committee progress.

8.0 REPORTING PROCEDURES

8.1 Appointing Authority

The Select Board recommends that the committee chair report regularly to the appointing authority about the committee's actions and plans. The Select Board liaison and/or staff liaison can be particularly helpful in maintaining communication between the committee and appointing authority. If needed, the chair may request a meeting with the appointing authority to resolve problems and report progress.

8.2 Liaison with Select Board

A Select Board member acts as a liaison to each committee the Board appoints. The committee chair consults with the liaison when problems occur. The Select Board liaison keeps in touch with the committee's work by attending meetings when possible, talking with the chair, and receiving minutes, agendas, and reports. The liaison may chair the first meeting of a newly established committee, explain the charge, and preside over the election of a chair who will then take over the meeting.

The liaison does not usually have a vote on the committee but is sometimes asked to give an opinion or assistance. Occasionally, a special committee is made up of representatives from many committees; in those cases, all members may be voting members. It is best to clarify voting or nonvoting status at the beginning of the committee's work. The liaison reports to the full Select Board from time to time about the committee's progress.

8.3 Liaison with Staff

To the extent possible, the Town Manager appoints a staff member, usually a department head, to serve as liaison to each committee. The liaison attends committee meetings as necessary; his/her responsibilities vary, depending on the charge of the committee, but generally include providing technical support and information. The staff liaison remains responsible to the Town Manager, not to the committee. He/she keeps the Town Manager informed of the committee's work, particularly policy issues, significant problems or developments, workload difficulties, and any other items which may be of significance. The Town Manager often seeks input from the committee chair prior to the annual review of the liaison's job performance. Requests for legal assistance from Town Counsel should be directed to the Town Manager through the committee's staff liaison.

8.4 Public Information Meetings

The success of a committee's endeavors often depends on effective communication with the public. The committee should hold public meetings and hearings when needed both to inform citizens of work in progress and to gain public reaction and response. The committee should issue press releases periodically to keep the public informed.

8.5 Town Meeting

If a relevant article is on the warrant or if the committee's charge specifies a report to Town

Meeting, the committee should prepare information for Town Meeting . The committee should make these reports clear, concise and brief, keeping in mind the large volume of materials Town Meeting members receive.

A committee may request inclusion of an article in the Town Meeting warrant by a letter to the Select Board from the committee if a majority of the committee consents to the submission. Articles may be reworded by the Select Board upon advice of Town Counsel. All articles should be submitted to the Select Board by the deadlines established by the Select Board. Committee members sometimes find that they wish to discuss and consider making recommendations on other articles at their meetings. In such cases, the Select Board suggests that the committee send written notice of the scheduled discussion to the sponsors of the article. For additional information about warrant articles, refer to the section entitled *Advice to Sponsors of Warrant Articles* in the League of Women Voters' Town Meeting Handbook.

8.6 Annual Town Report

All appointed committees should file an annual report of committee activities for the Annual Town Report. The chair or other designated member should detail committee membership, including changes, and a one-to three-paragraph explanation of major accomplishments and future plans. A request for committee reports is issued each year.

SOURCES OF INFORMATION

- "Appointed Committee Handbook," Amherst, MA, 1978, 1990.
- "Lincoln Committee Handbook," Lincoln, MA, 1985.
- "Open Meeting Law Guidelines," Commonwealth of Massachusetts Office of the Attorney General.
- "Your Amherst Government," League of Women Voters of Amherst, 1992.
- "Town Meeting Handbook," League of Women Voters of Massachusetts, 1998.
- Massachusetts General Laws:
 - Chapter 4, Section 7(26): Public Records Law
 - Chapter 39, Section 23B: Open Meeting Law
 - Chapter 268A: Conflict of Interest
- Massachusetts Conflict of Interest Law, State Ethics Commission, www.mass.gov/ethics/web268A.htm

APPENDIX

<u>COMMITTEE NAME</u>

Meeting Date: _____

CALL TO ORDER

The meeting was called to order _____ (include time). in the _____
(include meeting location)

COMMITTEE MEMBERS IN ATTENDANCE (mandatory)

COMMITTEE MEMBERS ABSENT (mandatory)

STAFF IN ATTENDANCE (mandatory)

OTHERS IN ATTENDANCE (optional)

COMMITTEE AGENDA (mandatory)

COMMITTEE ACTION – BY VOTE (*RECORD NAMES*) OR CONSENSUS (mandatory)

DISCUSSION (optional)

ADJOURNMENT (mandatory)

Voted unanimously to adjourn at _____ P.M.

SUBMITTED BY (mandatory)

EXECUTIVE SESSION

Please note special protocol required for Executive Session detailed in Open Meeting Law Chapter 39, Section 23B.

General Laws of Massachusetts
Open Meeting Law

Chapter 39: Section 23B. Open meetings of governmental bodies.

Section 23B: All meetings of a governmental body shall be open to the public and any person shall be permitted to attend any meeting except as otherwise provided by this section.

No quorum of a governmental body shall meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as provided by this section.

No executive session shall be held until the governmental body has first convened in an open session for which notice has been given, a majority of the members have voted to go into executive session and the vote of each member is recorded on a roll call vote and entered into the minutes, the presiding officer has cited the purpose for an executive session, and the presiding officer has stated before the executive session if the governmental body will reconvene after the executive session.

Nothing except the limitation contained in this section shall be construed to prevent the governmental body from holding an executive session after an open meeting has been convened and a recorded vote has been taken to hold an executive session. Executive sessions may be held only for the following purposes:

- (1) To discuss the reputation, character, physical condition or mental health rather than the professional competence of an individual, provided that the individual involved in such executive session has been notified in writing by the governmental body, at least forty-eight hours prior to the proposed executive session. Notification may be waived upon agreement of the parties. A governmental body shall hold an open meeting if the individual involved requests that the meeting be open. If an executive session is held, such individual shall have the following rights:
 - (a) to be present at such executive session during discussions or considerations which involve that individual.
 - (b) to have counsel or a representative of his own choosing present and attending for the purpose of advising said individual and not for the purpose of active participation in said executive session.
 - (c) to speak in his own behalf.
- (2) To consider the discipline or dismissal of, or to hear complaints or charges brought against, a public officer, employee, staff member, or individual, provided that the individual involved in such executive session pursuant to this clause has been notified in writing by the governmental body at least forty-eight hours prior to the proposed executive session. Notification may be waived upon agreement of the parties. A governmental body shall hold an open meeting if the individual involved requests that the meeting be open. If an executive session is held, such individual shall have the following rights:
 - (a) to be present at such executive session during discussions or considerations which involve that individual.
 - (b) to have counsel or a representative of his own choosing present and attending for the purpose of advising said individual and not for the purpose of active participation.
 - (c) to speak in his own behalf.
- (3) To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the governmental body, to conduct strategy sessions in preparation for negotiations with nonunion personnel, to conduct collective bargaining sessions or contract negotiations with nonunion personnel.
- (4) To discuss the deployment of security personnel or devices.
- (5) To investigate charges of criminal misconduct or to discuss the filing of criminal complaints.
- (6) To consider the purchase, exchange, lease or value of real property, if such discussions may have a detrimental effect on the negotiating position of the governmental body and a person, firm or corporation.

(7) To comply with the provisions of any general or special law or federal grant-in-aid requirements.

(8) To consider and interview applicants for employment by a preliminary screening committee or a subcommittee appointed by a governmental body if an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee or a subcommittee appointed by a governmental body, to consider and interview applicants who have passed a prior preliminary screening.

(9) To meet or confer with a mediator, as defined in section twenty-three C of chapter two hundred and thirty-three, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or body, provided that: (a) any decision to participate in mediation shall be made in open meeting session and the parties, issues involved and purpose of the mediation shall be disclosed; and (b) no action shall be taken by any governmental body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open meeting after such notice as may be required in this section.

This section shall not apply to any chance meeting, or a social meeting at which matters relating to official business are discussed so long as no final agreement is reached. No chance meeting or social meeting shall be used in circumvention of the spirit or requirements of this section to discuss or act upon a matter over which the governmental body has supervision, control, jurisdiction or advisory power.

Except in an emergency, a notice of every meeting of any governmental body shall be filed with the clerk of the city or town in which the body acts, and the notice or a copy thereof shall, at least forty-eight hours, including Saturdays but not Sundays and legal holidays, prior to such meeting, be publicly posted in the office of such clerk or on the principal official bulletin board of such city or town. The secretary of a regional school district committee shall be considered to be its clerk and he shall file the notice of meetings of the committee with the clerk of each city or town within such district and each such clerk shall post the notice in his office or on the principal official bulletin board of the city or town and such secretary shall post such notice in his office or on the principal official bulletin board of the district. If the meeting shall be of a regional or district governmental body, the officer calling the meeting shall file the notice thereof with the clerk of each city and town within such region or district, and each such clerk shall post the notice in his office or on the principal official bulletin board of the city or town. The notice shall be printed in easily readable type and shall contain the date, time and place of such meeting. Such filing and posting shall be the responsibility of the officer calling such meeting.

A governmental body shall maintain accurate records of its meetings, setting forth the date, time, place, members present or absent and action taken at each meeting, including executive sessions. The records of each meeting shall become a public record and be available to the public; provided, however, that the records of any executive session may remain secret as long as publication may defeat the lawful purposes of the executive session, but no longer. All votes taken in executive sessions shall be recorded roll call votes and shall become a part of the record of said executive sessions. No votes taken in open session shall be by secret ballot.

A meeting of a governmental body may be recorded by any person in attendance by means of a tape recorder or any other means of sonic reproduction or by means of videotape equipment fixed in one or more designated locations determined by the governmental body except when a meeting is held in executive session; provided, that in such recording there is no active interference with the conduct of the meeting.

Upon qualification for office following an appointment or election to a governmental body, as defined in this section, the member shall be furnished by the city or town clerk with a copy of this section. Each such member shall sign a written acknowledgement that he has been provided with such a copy.

The district attorney of the county in which the violation occurred shall enforce the provisions of this section.

Upon proof of failure by any governmental body or by any member or officer thereof to carry out any of the provisions for public notice or meetings, for holding open meetings, or for maintaining public records thereof, any justice of the supreme judicial court or the superior court sitting within and for the county in which such governmental body acts shall issue an appropriate order requiring such governmental body or member or officer thereof to carry out such provisions at future meetings. Such order may be sought by complaint of three or more registered voters, by the attorney general, or by the district attorney of the county in which the city or town is located. The order of notice on the complaint shall be

returnable no later than ten days after the filing thereof and the complaint shall be heard and determined on the return day or on such day thereafter as the court shall fix, having regard to the speediest possible determination of the cause consistent with the rights of the parties; provided, however, that orders with respect to any of the matters referred to in this section may be issued at any time on or after the filing of the complaint without notice when such order is necessary to fulfill the purposes of this section. In the hearing of such complaints the burden shall be on the respondent to show by a preponderance of the evidence that the action complained of in such complaint was in accordance with and authorized by section eleven A %p1/2%p of chapter thirty A, by section nine G of chapter thirty-four or by this section. All processes may be issued from the clerk's office in the county in which the action is brought and, except as aforesaid, shall be returnable as the court orders.

Such order may invalidate any action taken at any meeting at which any provision of this section has been violated, provided that such complaint is filed within twenty-one days of the date when such action is made public.

Any such order may also, when appropriate, require the records of any such meeting to be made public, unless it shall have been determined by such justice that the maintenance of secrecy with respect to such records is authorized. The remedy created hereby is not exclusive, but shall be in addition to every other available remedy. Such order may also include reinstatement without loss of compensation, seniority, tenure or other benefits for any employee discharged at a meeting or hearing held in violation of the provisions of this section.

Such order may also include a civil fine against the governmental body in an amount no greater than one thousand dollars for each meeting held in violation of this section.

The rights of an individual set forth in this section relative to his appearance before a meeting in an executive or open session, are in addition to the rights that an individual may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements, and the exercise or non-exercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.